

TOBACCO AND POLITICS CLINTON STYLE

Everyone, including the tobacco industry, agrees that kids should not smoke cigarettes or use smokeless tobacco. But it's disturbing that the Clinton Administration proposes to address a social problem with onerous federal regulations that will not work.

The sad reality is that the Administration is playing politics with this issue. Taking on the tobacco industry might seem like smart politics to the President and his advisors, but giving the Federal Food and Drug Administration power to regulate tobacco is not the right answer to attack teenage smoking.

The President's political team has an embarrassing habit of openly disclosing its political calculations. On the day when the President announced the FDA's plan to regulate tobacco, The New York Times reported that the President's aides thought the President would gain political points by "standing up for a cause he believed in."

Let's quit kidding ourselves. The issue here is not youth smoking; the issue is how to gain some political traction for a President who too often appears to lack any conviction.

In all the hoopla surrounding the FDA's announcement last August of its plan to regulate tobacco, there was no mention of the 1992 amendment to the Public Health Service Act that focused directly on how to effectively address the youth smoking issue. In that legislation, Congress determined that the best policy for preventing teenage consumption of tobacco is to ensure that minors do not have access to tobacco products -- that means enforcing the minimum age laws already on the books in all 50 States.

Congress provided incentives for States to enforce their minimum age laws by conditioning substance abuse block grants on the success of their efforts. Congress further directed the Secretary of Health and Human Services to write rules to guide those State efforts.

Early this year -- more than three years after the passage of this 1992 law -- HHS finally got around to finalizing these rules. Of course, the delay can be explained by the Administration's support for the FDA's illegal power grab. The Administration sat on the implementation of Congress' tobacco control program, because Congress' reasonable approach did not allow the President to "get tough" with the tobacco industry in an election year.

Instead of helping States in their efforts to enforce minimum age laws and keep cigarettes out of the hands of kids, the Administration proposed radical advertising restrictions -- even though experts tell us that kids use tobacco for reasons unrelated

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to advertising such as peer pressure, parental influence, and rebellion.

The Administration has blessed this unprecedented and unlawful power grab by the FDA because it's more concerned with election year politics than results. And, in its eagerness to grab onto a hot political issue, the Administration ignored the very serious consequences of FDA jurisdiction over tobacco.

The Administration has couched its action as necessary to protect children, but the proposals are so broad that they needlessly trample the rights of adults to choose to smoke.

While the Administration has stated publicly that it is not seeking a prohibition of tobacco products, the FDA has a statutory duty to verify that the drugs and medical devices it regulates are "safe and effective." FDA Commissioner David Kessler and previous Commissioners have said that the agency could never find cigarettes "safe and effective." Just how does the Administration propose to resolve this legal conundrum if, as the FDA has asserted, nicotine in tobacco is a drug and cigarettes are "medical devices?" Does anyone doubt that those classifications will encourage some anti-tobacco group to sue the FDA to compel the agency to ban tobacco altogether?

The truth is that by attempting to impose FDA jurisdiction over tobacco products -- an act the FDA and Congress have long recognized is not within the FDA's legal jurisdiction -- the Administration has set in motion a sequence of events that will lead to a new era of Prohibition. The danger of prohibition -- not opposition to measures to eliminate youth smoking -- is why the nation's tobacco companies are fighting the FDA plan so vigorously. This danger also underlies the federal lawsuit against the FDA by the tobacco companies.

Do we really want the FDA to usher in a new era of Prohibition and federal nannyism? Do we really want our unelected officials to create new laws when our Constitution wisely placed this responsibility with Congress?

Increasingly, Americans favor less regulation by the federal government of their personal lives. The vast majority of Americans believe adults are well informed of the health risks associated with tobacco use and that smoking is a choice that adults should be free to make.

Congress and the States have already taken measures to prevent youth smoking. It is Congress' responsibility to determine if further federal measures are necessary. It's time to get politics out of this issue and let reason and common sense prevail.